

Remarks

This Response is considered fully responsive to the Office Action mailed April 10, 2008. Claims 1-29 were pending in the application. Claims 1-29 stand rejected. In this Response, claims no claims are amended, added, or cancelled. Reexamination and reconsideration of the claims are requested.

Rejections Under 35 U.S.C. § 103

Claims 1-19 and 21-29 stand rejected under 35 U.S.C. § 103(a) as being purportedly unpatentable to Brebner in view of U.S. Patent No. 6,151,643 to Cheng, et al. (“Cheng”). All rejections are respectfully traversed.

Independent claim 1 recites, *inter alia*, “requesting a service from the remote service distribution system, the service including transmission of software to the local device, wherein definitions of the hardware resources and software resources of the local device from the data structure are transmitted to the remote service distribution system as part of the service request.” With respect to independent claim 1, the Office alleges that Brebner teaches “requesting a service from the remote service distribution system, wherein definitions of the hardware resources and software resources of the local device from the data structure are transmitted to the remote service distribution system as part of the service request.” The Office, however, acknowledges that Brebner does not teach that the service includes transmission of software to the local device, as recited in independent claim 1, and relies upon Cheng to teach that the service includes transmission of software to the local device. Cheng at col.3, lines 40-45 is cited in support of this position. Further, the Office contends that it would have been obvious to combine the teachings of Brebner with the teachings of Cheng “in order to provide users with an easier way to identify which updates are available for their systems and to resolve the technical difficulties in obtaining and installing the correct updates” (citing Cheng at col. 2, lines 18-21). Applicants respectfully disagree with these contentions.

In response to Applicants’ previous Arguments, the Examiner repeatedly states that “applicants should note where Cheng discusses analyzing a client computer to determine which software products are installed on the computer and receiving indications of the installed software products from the client computer (see FIG. 8 and associated text, e.g. col. 10 lines 29-

31, col. 11 lines 5-7 and lines 28-31, and col. 14 lines 45-64).” Applicants respectfully submit that Cheng does not disclose or suggest receiving indications of the installed software products from the client computer. Instead, Cheng explicitly teaches that portions of the update database 709 illustrated in FIG. 8 of Cheng are downloaded to the client computer, so that the analysis and determination of necessary updates can be conducted locally, without having to transmit any indications of installed software products. Thus, no indications of the installed software products are received by any other computer. Specifically, Cheng at col. 13, line 58 to col. 14, line 64 discusses the analysis of installed software products and determination of applicable updates at the client computer. Further, Cheng at col. 15, lines 21-27 states that “The client computer 101 accesses the identified URL(s) and downloads the software update files, typically from the software vendor computer 103, although the downloads may be from mirror sites, or the like. The client computer 101 further downloads (from the received URLs) any additional installation files, such as installation executables, and scripts.” If Cheng were to transmit any indications of installed software products to remote computers or locations, the principle of operation of Cheng would be altered, as Cheng seeks to provide a system to determine software updates “without abridging the privacy of users by obtaining and storing system profile information.” Cheng at col. 2, lines 52-59.

Applicants respectfully submit that Cheng explicitly teaches that the transmission of information, such as definitions of hardware resources and software resources of a local device, to a remote system, is undesirable. Cheng at col. 2, lines 24-60. “A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Further, Applicants respectfully submit that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). As Cheng explicitly teaches that transmission and storage of system profile information is undesirable, no motivation exists to combine Cheng with Brebner, which explicitly teaches the transmission of system profile information to remote locations.

Additionally, while the Office has stated that one of ordinary skill in the art would have been motivated to combine the teachings of Brebner and Cheng “in order to provide users with

an easier way to identify which updates are available for their systems and to resolve the technical difficulties in obtaining and installing the correct updates.” Applicants respectfully submit that Cheng already accomplishes the goal of providing users with an easier way to identify which software updates are available for their systems and to resolve the technical difficulties in obtaining and installing the correct updates. The teachings of Brebner merely relate to potential (non-downloadable) hardware updates that would maximize or optimize computer system performance based on the currently installed software programs and are unrelated to downloading software updates.

In view of the teachings of Cheng, Applicants respectfully submit that there is no proper motivation to combine the Cheng reference with Brebner. Thus, Cheng fails to cure the deficiencies of Brebner acknowledged by the Office.

Accordingly, without conceding the propriety of the combination, Applicants respectfully submit that the combination of Brebner and Cheng fails to teach all of the features of independent claim 1 and those claims depending directly or indirectly therefrom. Reconsideration of the rejection and allowance of independent claim 1 and those claims depending directly or indirectly therefrom are respectfully requested.

With respect to independent claim 8, Cheng is relied upon to teach at least one service available to the remote device. However, as discussed above, Cheng explicitly teaches away from transmitting information regarding a client device to a remote location. As a result, the teachings of Brebner and Cheng cannot be properly combined, and Cheng fails to remedy the deficiencies of Brebner acknowledged by the Office.

Accordingly, without conceding the propriety of the combination, Applicants respectfully submit that the combination of Brebner and Cheng fails to teach all of the features of independent claim 8 and those claims depending directly or indirectly therefrom. Reconsideration of the rejection and allowance of independent claim 8 and those claims depending directly or indirectly therefrom are respectfully requested.

With respect to independent claim 18, the Office acknowledges that Brebner fails to teach displaying a list of available services that are compatible the hardware resources on the remote device, and relies upon Cheng at col. 14, line 66 to col. 15, lines 1-4 to cure this deficiency. However, Cheng merely discloses the display of a list of available **software** updates that are applicable to the installed software. This list does not provide any indication of whether

any services are compatible with the hardware resources, as Cheng does not analyze the hardware resources on any device. Thus, Cheng is silent regarding the consideration of hardware in determining the compatibility of updates.

Further, as discussed above, Cheng explicitly teaches away from transmitting information regarding a client device to a remote location. As a result, the teachings of Brebner and Cheng cannot be properly combined, and Cheng fails to remedy the deficiencies of Brebner acknowledged by the Office.

Accordingly, without conceding the propriety of the combination, Applicants respectfully submit that the combination of Brebner and Cheng fails to teach all of the features of independent claim 18 and those claims depending directly or indirectly therefrom. Reconsideration of the rejection and allowance of independent claim 18 and those claims depending directly or indirectly therefrom are respectfully requested.

With respect to independent claim 26, the Office acknowledges that Brebner does not teach displaying a list of services that would enhance the hardware and software resources available on the remote device, and Cheng is relied upon to cure this deficiency. However, as discussed above, Cheng is silent regarding the consideration of hardware resources. Further, Cheng teaches away from the transmission of information about the remote device from the remote device and, as discussed above, cannot be properly combined with Brebner.

Accordingly, without conceding the propriety of the combination, Applicants respectfully submit that the combination of Brebner and Cheng fails to teach all of the features of independent claim 26 and those claims depending directly or indirectly therefrom. Reconsideration of the rejection and allowance of independent claim 26 and those claims depending directly or indirectly therefrom are respectfully requested.

Claim 20 stands rejected under 35 U.S.C. § 103(a) as being purportedly unpatentable to Brebner in view Cheng and further in view of U.S. Patent No. 6,167,567 to Chiles (“Chiles”). All rejections are respectfully traversed.

Applicants respectfully submit that Chiles fails to cure the deficiencies of Brebner and Cheng set forth above. Accordingly, without conceding the propriety of the combination, Applicants respectfully submit that the combination of Brebner, Cheng, and Chiles fails to teach all of the features of claim 20. Reconsideration of the rejection and allowance of claim 20 and those claims depending directly or indirectly therefrom are respectfully requested.

Conclusion

Claims 1-29 are currently pending in the application. Applicant has fully responded to each and every objection and rejection in the Office action dated April 10, 2008 and believes that claims 1-29 are in condition for allowance. Applicant therefore requests that a timely Notice of Allowance be issued in this case.

The Applicant believes no other fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this a request therefor and authorization to charge Deposit Account No. 50-3199 as necessary.

If the Examiner believes any issues could be resolved via a telephone interview, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: July 10, 2008

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